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APPENDIX A

Entry Date:
March 16, 2007

UNITED STATES COURT
OF APPEALS
FOR THE FIFTH CIRCUIT

United States Court of Appeals
Fifth Circuit
FILED
March 16, 2007
Charles R. Fulbruge, III
Clerk

No. 06-40736

MARIE INEZ CRAVENS, Individually and on Behalf of the Estate of Abner Cravens, Deceased and all Wrongful Death and Survival Action Beneficiaries; TONY CRAVENS; NATASHA CRAVENS; LORRETA CRAVENS, as next Friend of L C, a minor,

Plaintiffs-Appellants,

versus

CITY OF LA MARQUE, TEXAS,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Texas, Galveston Division
Docket No. 3:05-CV-545

Before JONES, Chief Judge, and JOLLY and STEWART, Circuit Judges.

PER CURIAM:*

The court has heard oral argument and reviewed the briefs and pertinent portions of the record. As the district court found, the appellants failed to establish that a § 1983 cause of action exists in the Fifth Circuit on the state-created-danger theory under these facts. See Saenz v. Heldenfels Bros., Inc., 183 F.3d 389 (5th Cir. 1999). Accordingly, there can be no municipal liability.

AFFIRMED.

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* Pursuant to 5th Cir. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5th Cir. R. 47.5.4.

APPENDIX B

Date of Entry: February 28, 2006

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

Marie Cravens, et al.,

Plaintiffs,

v. Civil Action No. G-05-545

City of La Marque, Texas,
Defendant

Order Granting Defendant City of La Marque's Motion to Dismiss for Failure to State a Claim

This case arises out of alleged misconduct by former City of La Marque police officer Richard Ontiveros ("Ontiveros"), who failed to take Abner Cravens ("Cravens") into custody for driving while intoxicated even though he allegedly had probable cause to do so. Plaintiffs are Cravens's survivors and representatives of the estate. They bring their claims against the City of La Marque ("the City") under 42 U.S.C. § 1983 for alleged violations of Cravens's constitutional rights. Now before the Court is the City's Motion to Dismiss for Failure to State a Claim pursuant to FED. R. CIV. P. 12(b)(6). For the reasons stated below, the City's Motion is **GRANTED**, and

Plaintiffs' claims against the City are hereby **DISMISSED WITH PREJUDICE.** [1]

I. Background

Plaintiffs allege that Cravens was denied substantive due process and equal protection under the Fourteenth Amendment to the United States Constitution. Plaintiffs claims are based on the alleged misconduct of Officer Ontiveros, who at the time of the events giving rise to this lawsuit was employed as a police officer by the City. Plaintiffs claim that the City is directly liable for the actions of Officer Ontiveros based on its policies, customs, and practices, which resulted in the violation of Cravens's constitutional rights and resulted in his untimely death. The tragic facts of this case are laid out below.[2]

Plaintiffs allege that around 5:30 p.m., on or about October 13, 2003, Cravens was driving his vehicle in La Marque, Texas, when he rear-ended another motor vehicle driven by Rosezelia Sonnier ("Sonnier"), who also happened to be his cousin. After the accident occurred, Sonnier and others were concerned about Cravens's well-being because he appeared to be intoxicated, and they called the La Marque Police Department. Police arrived at the scene of the accident shortly

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1 This Court does not consider this Order worthy of publication. Accordingly, it has not requested and does not authorize publication.

2 Since this is a Motion to Dismiss, the Court must consider the facts as they have been presented by Plaintiffs. Accordingly, the Court has laid out the facts as alleged in Plaintiffs' Complaint, but makes no judgment as to their accuracy.

thereafter, and Officer Ontiveros conducted an investigation.[3] Plaintiffs claim that Officer Ontiveros was advised at the scene that Cravens was intoxicated and that he required help, and that Officer Ontiveros knew that Cravens was intoxicated based on his own personal observations. Next, Plaintiffs claim that Officer Ontiveros told Cravens's family and others that he had the situation under control, that he would handle the situation, and that their involvement "was no longer needed, necessary, or allowed." As a result, all of the people that would have helped Cravens left his "well-being" in the hands of Officer Ontiveros. Additionally, Plaintiffs claim that Officer Ontiveros had probable cause to arrest Cravens for driving while under the influence of alcohol, but instead, released Cravens and allowed him to continue to drive his vehicle in his intoxicated state, posing a danger to himself and others.

Shortly after Officer Ontiveros released Cravens, he was involved in a second accident. Cravens crossed the center line and ran head-on into oncoming traffic. Cravens suffered injuries that ultimately lead to his death several days later. Plaintiffs allege that had Officer Ontiveros not told them that he had the situation under control, they would have made sure Cravens was driven from the scene and given proper medical care. Essentially, Plaintiffs claim that but for the actions of Officer Ontiveros, Cravens would still be alive.

Plaintiffs originally filed suit against the City and Officer Ontiveros. That cause of action was dismissed on July 11,2005 because Plaintiffs' Counsel failed to appear at the Rule 16 Scheduling Conference. On July 25, 2005, Plaintiffs moved to reopen the case as to Officer Ontiveros only. The Court granted

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[3] Plaintiffs do not mention any other La Marque police officers in their Complaint.

that motion and the case was reopened as to Officer Ontiveros.[4] On October 12, 2005, Plaintiffs filed a separate suit against the City concerning the same events. On November 16, 2005, the City filed its Motion to Dismiss for Failure to State a Claim. After thoughtful consideration of the City's Motion, Plaintiff's Response thereto, and applicable law, the Court concludes that the City's Motion to Dismiss is hereby **GRANTED**.

II. Motion to Dismiss for Failure to State a Claim

A party is entitled to dismissal under FED. R. CIV. P. 12(b)(6) when an opposing party fails to state a claim upon which relief may be granted. Rule 12(b)(6) dismissal is appropriate when it appears without a doubt that the plaintiff can prove no set of facts in support of his claims that would entitle him to relief. *See Swierkiewicz v. Sorema N.A.*, 534 U.S. 506, 514, 122 S. Ct. 992, 998, 152 L. Ed. 2d 1 (2002); *Conley v. Gibson*, 355 U.S. 41, 45–46, 78 S. Ct. 99, 102, 2 L. Ed. 2d 80 (1957); *Tuchman v. DSC Communications Corp.*, 14 F.3d 1061, 1067 (5th Cir. 1994). When considering a motion to dismiss for failure to state a claim, the Court accepts as true all well-pleaded allegations in the complaint, and views them in the light most favorable to the plaintiff. *See Scanlan v. Texas A&M University*, 343 F.3d 533, 536 (5th Cir. 2003); *Collins v. Morgan Stanley Dean Witter*, 224 F.3d 496, 498 (5th Cir. 2000) (noting that a court must construe the complaint liberally in favor of the plaintiff). *See also Malina v. Gonzales*, 994 F.2d 1121, 1125 (5th Cir. 1993). "A motion to dismiss under Rule 12(b)(6) 'is viewed with disfavor and is rarely granted.'" *Collins*, 224 F.3d at 498 (quoting *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards*, 677 F.2d 1045, 1050 (5th Cir. 1982).

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[4] Cause No. 3:05-cv-00222, Cravens, et al. v. Richard Ontiveros.

Although all doubts are resolved in the plaintiff's favor, a plaintiff still must plead specific facts to avoid dismissal for failure to state a claim; a court may not accept as true conclusory allegations or unwarranted deductions of fact contained within the plaintiff's complaint. See *Tuchman*, 14 F.3d at 1067; *Fernandez-Montez v. Allied Pilots Ass'n*, 987 F.2d 278, 284 (5th Cir. 1993). "'[A] statement of facts that merely creates a suspicion that the pleader might have a right of action' is insufficient." *Campbell v. City of San Antonio*, 43 F.3d 973, 975 (5th Cir. 1995) (quoting 3 CHARLES ALAN WRIGHT &ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE: CIVIL 2d § 1216 at 163). Dismissal is appropriate if the complaint lacks factual allegations regarding required elements necessary to obtain relief. Id. (citing 2A MOORE'S FEDERAL PRACTICE ¶ 12.07 [2.-5] at 12–19 (footnote omitted)).

Additionally, in considering a motion to dismiss for failure to state a claim, a district court must limit itself to the contents of the pleadings. *See Scanlan*, 343 F.3d at 536–37. In their Response, Plaintiffs invite the Court to consider briefs and exhibits that have been submitted in their lawsuit against Officer Ontiveros in his individual capacity. *See* Defendant's Motion for Summary Judgment, Cravens, et al. v. Ontiveros, Cause No. 3:05-cv-222. Those exhibits have no bearing on the Court's determination of the sufficiency of Plaintiffs' Complaint to state a claim for which relief can be granted against the City, and they will not be considered. Only in narrow circumstances are documents beyond the pleadings themselves considered by a court in ruling on a Rule 12(b)(6) motion. *See Scanlan*, 343 F.3d at 536–37. This case does not fall within those parameters, and the City's Motion to Dismiss will be based solely on the pleadings.

III. Analysis

A. 42 U.S.C. § 1983

42 U.S.C. § 1983 provides a cause of action for those who have been deprived of their federal rights under color of law. Section 1983 does not create any substantive rights, rather, it "simply provides a remedy for the rights that it designates." *Johnson v. Harris County Flood Control Dist.*, 869 F.2d 1565, 1574 (5th Cir. 1989). The assertion of an underlying constitutional or federal statutory violation is a predicate to liability under § 1983. *See Doe v. Dallas Indep. Sch. Dist.*, 153 F.3d 211, 215 (5th Cir. 1998). A municipality will only be held liable for the violation of a plaintiff's constitutional rights if the municipality's policies were the moving force behind the constitutional violation. *See Piotrowski v. City of Houston*, 237 F.3d 567, 578 (5th Cir. 2001) ("*Piotrowski II*") (citing Monell v. Dep't of Social Servs. of City of New York, 436 U.S. 658, 690–94, 98 S. Ct. 2018, 2035–37, 56 L. Ed. 2d 611 (1978)).

Plaintiffs premise their § 1983 claims upon the following constitutional violations: (1) violation of Cravens's substantive due process rights under the Fourteenth Amendment to the United States Constitution arising from a special relationship as established in the Supreme Court's decision in *DeShaney v. Winnebago County Dept. of Soc. Sevs.*, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989); (2) violation of Cravens's substantive due process under the Fourteenth Amendment to the United States Constitution arising under the state-created danger theory; and (3) violation of Cravens's rights under the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. The sufficiency of Plaintiffs' claims against the City with respect to each alleged constitutional violation will be analyzed individually. Each analysis will require a two-part inquiry: (1) have Plaintiffs alleged facts

which, if true, amount to a constitutional violation, and (2) have Plaintiffs alleged that a policy or custom of the City was the moving force behind the constitutional violation.

A. Substantive Due Process

In general, municipalities are under no affirmative duty to provide protection to private citizens. "[T]he Due Process Clauses generally confer no affirmative right to governmental aid, even where such aid may be necessary to secure life, liberty or property interests of which the government itself may not deprive the individual." *Id.* at 196, 109 S. Ct. at 1003. "[A] State's failure to protect an individual against private violence simply does not constitute a violation of the Due Process Clause." *Id.* at 197, 109 S. Ct. 1004. However, there are exceptions. The Constitution imposes a duty to protect individuals in two limited circumstances: (1) when the state has a special relationship with a person; or (2) when the state exposes a person to a danger of its own creation (a "state-created danger"). *See Piotrowski v. City of Houston*, 51 F.3d 512, 516 (5th Cir. 1995) ("*Piotrowski I*") (citing *Salas v. Carpenter*, 980 F.2d 299, 307 (5th Cir. 1992)). Plaintiffs argue both that Officer Ontiveros created a special relationship with Cravens and therefore had a duty to protect him, and that Officer Ontiveros subjected Cravens to a state-created danger by cutting off a private source of aid.

1. Special Relationship

"[I]n certain limited circumstances, the Constitution imposes upon the State affirmative duties of care and protection with respect to particular individuals." *DeShaney*, 489 U.S. at 198, 109 S. Ct. at 1004. This is known as the "special relationship" exception. Under this exception, the state has a constitutional duty to protect an individual from known

threats of harm by private actors. *See Beltran v. City of El Paso*, 367 F.3d 299, 307 (5th Cir. 2004); *Priester v. Lowndes County*, 354 F.3d 414, 421–22 (5th Cir. 2004). The affirmative duty only arises when the state acts to restrain an individual through incarceration, institutionalization or puts some other similar restraint on an individual's personal liberty by the affirmative exercise of state power such that he cannot act on his own behalf. *See McClendon v. City of Columbia*, 305 F.3d 314, 324 (5th Cir. 2002); *Walton v. Alexander*, 44 F.3d 1297, 1303–04 (5th Cir. 1995). *See also DeShaney*, 489 U.S. 199–200, 109 S.
Ct. at 1005–06.

Plaintiffs have failed to allege any facts in their Complaint that would support a cause of action under the special relationship exception. First, there is no allegation that Cravens was institutionalized, incarcerated or in any other way restrained his freedom. *See McClendon*, 305 F.3d at 324. In fact, it was Officer Ontiveros's failure to arrest is the keystone to Plaintiffs' claims. Cravens was only detained for the purpose of investigating the accident, and he was then permitted to drive away. In *Beltran v. City of El Paso*, the Fifth Circuit emphasized that the state actor must affirmatively place the individual into custody and restrain the individual's freedom for the special relationship exception to apply. *See Beltran*, 367 F.3d at 307 (finding that the actions of a 911 operator encouraging a caller to stay in the bathroom and telling her that police were on their way did not establish a special relationship or that the operator became the custodian of the caller's safety).

Second, there is no allegation that Officer Ontiveros prevented Cravens from acting on his own behalf. Officer Ontiveros merely let Cravens return to the activities in which he was engaged directly before coming into contact with the police. Whether Cravens could act on his own behalf given his

alleged state of intoxication is irrelevant. Cravens's intoxicated state was due to his own voluntary actions, and his intoxication alone does not give rise to a special relationship with Officer Ontiveros. There was no special relationship between Cravens and Officer Ontiveros and therefore no constitutional violation. As such, there can be no claim against the City, for if a person has not suffered a constitutional injury, whether the City's regulations might have authorized the conduct is beside the point. *See Los Angeles v. Heller*, 475 U.S. 796, 799, 106 S. Ct. 1571, 1573, 89 L. Ed. 2d 806 (1986). Plaintiffs claim against the City premised on the special relationship theory is hereby
DISMISSED WITH PREJUDICE.

2. State Created Danger Under Substantive Due Process

The validity of the state-created danger theory is uncertain in the Fifth Circuit, which has repeatedly declined to recognize state-created danger as a trigger of affirmative duties under the Due Process Clause. *See Beltran*, 367 F.3d at 307; *Rivera v. Houston Indep. Sch. Dist.*, 349 F.3d 244, 249 (5th Cir. 2003). However, on numerous occasions the Fifth Circuit has recognized and discussed the existence and elements of the doctrine, as well as its acceptance in other Circuits. *See id.*; *Scanlan*, 343 F.3d at 538; *Randolph v. Cervantes*, 130 F.3d 727 (5th Cir. 1997); *Doe v. Hillsboro Indep. Sch. Dist.*, 113 F.3d 1412 (5th Cir. 1997); *Piotrowski I*, 51 F.3d 512; *Johnson v. Dallas Indep. Sch. Dist.*, 38 F.3d 521 (5th Cir. 1994). Additionally, the Circuit has discussed what a plaintiff would be required to show to prevail on such a theory. To survive Rule 12(b)(6) dismissal, a plaintiff must allege facts sufficient to show: (1) that the state actor increased the danger to the individual, and (2) that the state actor acted with deliberate indifference to the plight of the plaintiff. *See Rivera*, 349 F.3d at 249; *Scanlan*, 343 F.3d at 537–38; *Piotrowski I*, 51 F.3d at

515. "The key to the state created danger cases...lies in the state actors' culpable knowledge and conduct in affirmatively placing an individual in a position of danger, effectively stripping a person of [his or] her ability to defend [himself or] herself, or cutting off potential sources of private aid." *Johnson*, 38 F.3d at 201 (quotations and citations omitted). In *Scanlan*, the Circuit expressly noted that despite the theory's uncertain viability, a district court should treat such claims as valid on a motion to dismiss, and analyze them accordingly. *See Scanlan*, 343 F.3d at 538.

According to the facts as alleged, Officer Ontiveros prevented Cravens's cousin and others from rendering aid to Cravens at the scene of the first accident by telling them that "he had the situation in hand and that he would take care of the situation." By making representations that Cravens would be taken care of, he cut off a potential source of aid, and discouraged Cravens's family and others from looking out for the safety of Cravens. Plaintiffs claim that but for Officer Ontiveros's representations, Cravens's family and others would have intervened to see that Cravens arrived home safely. These facts, as alleged, demonstrate that by cutting off a potential source of aid, Officer Ontiveros created a situation where Cravens was in greater danger than he would have otherwise been.[5]

Whether the facts support the second requirement, that Officer Ontiveros acted with deliberate indifference, presents a more difficult question. There is a significant distinction between a tort and a constitutional wrong. *See Lefall v. Dallas Ind. Sch. Dist.*, 28 F.3d 521, 532 (citing *de Jesus Benavides v. Santos*, 883 F.2d 385, 388 (5th Cir. 1989)). The Supreme Court has made it clear that "[t]he Due Process Clause of the

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[5] The Court again notes that the facts alleged must be taken as true.

Fourteenth Amendment is not implicated by the lack of due care of an official causing unintended injury to life, liberty or property." *Davidson v. Canon*, 474 U.S. 344, 347, 106 S. Ct. 668, 670, 88 L. Ed. 2d 677 (1986). Where a state actor is merely negligent in causing the injury, no procedure for compensation is constitutionally required. Id. Reckless and grossly negligent conduct by state officials falls squarely within the ambit of traditional state tort law. *See de Jesus Benavides*, 883 F.2d at 388. Accordingly, the conduct of a state actor does not violate a victim's right to substantive due process unless that conduct is carried out with deliberate indifference.

Deliberate indifference is a "lesser form of intent rather than a heightened form of negligence." *Lefall*, 28 F.3d at 531 (internal quotations omitted). It involves a higher degree of certainty than gross negligence. *See Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 433, 453 (5th Cir. 1994). "Deliberate indifference requires that the state actor both knew of and disregarded an excessive risk to the victim's health and safety." *Beltran*, 367 F.3d at 307 (citing *McLendon*, 305 F.3d at 326 n.8). Plaintiffs' argue that by failing to arrest Cravens when he was intoxicated and by cutting off private sources of protection, Officer Ontiveros acted with deliberate indifference toward the safety and well being of Cravens. Plaintiffs rely upon a case from the Third Circuit, *Kneipp v. Tedder*, 95 F.3d 1199 (3d Cir. 1996), for this argument. In that case, an intoxicated woman was walking home with her husband when the couple was stopped by police officers who later told the husband to go home. Id. at 1201–03. The husband left while his wife was resting on the hood of a police vehicle in the presence of several officers. After his wife did not return home, he went to look for her and came across the police officers he had been with earlier. When he asked about her whereabouts, an officer told him to "get out of here" before he was locked up. The

husband left again upon the instruction of the officer. His wife was later found in a ditch where she suffered hypothermia causing permanent brain damage. In that case, the Third Circuit found that the plaintiffs had "adduced sufficient evidence to raise a material issue as to whether [the officers] had acted in wilful disregard for [her] safety." Id. at 1208. The validity of Kneipp in this Circuit is far from certain. However, given the deference owed to a plaintiff on a motion to dismiss, the Court assumes without deciding that given the facts as alleged (that Officer Ontiveros knew that Cravens was intoxicated, permitted him to drive away from the scene of the accident and that he cut off private sources of aid), Plaintiffs have alleged sufficient facts to support their claim that Officer Ontiveros knew and disregarded an excessive risk to Cravens's safety.[6]

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The Court has doubts as to whether the act of allowing a drunk driver to continue driving after already committing one accident, and where people are offering to render him aid, actually amounts to deliberate indifference given the Supreme Court's recent decision in Town of Castle Rock, Colo. v. Gonzalez, __ U.S. __, 125 S. Ct. 2796, 162 L. Ed. 2d 658 (2005), and the Fifth Circuit's decision in Saenz v. Heldenfels Bros., Inc., 183 F.3d 389 (5th Cir. 1999). In Castle Rock, the Supreme Court recognized the "deep-rooted nature of law-enforcement discretion, even in the presence of seemingly mandatory legislative commands." Castle Rock, __ U.S. __, 125 S. Ct. at 2805-06. In Saenz, the Fifth Circuit found that "neither the text nor the history of the Due Process Clause supports holding that an officer who orders another officer to refrain from arresting a suspected drunk driver has committed a constitutional tort," and that a state officer "cannot offend due process by permitting an intoxicated driver to remain on the highway, thereby increasing the risk of harm to unidentified and unidentifiable members of the public." Saenz, 183 F.3d at 391, 392. For the purposes of this Motion, and given the absence of any directly-controlling authority, the Court will assume that Officer Ontiveros's actions amounted to deliberate indifference. However, the Court also recognizes

Therefore, Plaintiffs have stated facts sufficient to show a constitutional violation by Officer Ontiveros under the state-created danger theory.[7] The next inquiry is whether the City's policies or customs were the "moving force" behind the alleged violation. If not, then Plaintiffs' claim against the City must fail as a matter of law.

In suits against a city, "a plaintiff must demonstrate that a [city] 'policy' was the 'moving force' behind the constitutional violation." *In re Foust*, 310 F.3d 849, 861 (5th Cir. 2002) (citing *Brown v. Bryan County, Okla.*, 219 F.3d 450, 457 (5th Cir. 2000)). To prove a violative policy or practice, a plaintiff must show that "(1) the local government or official promulgated a policy; (2) the decision displayed 'deliberate indifference' and proved the government's culpability; and (3) the policy decision lead to the particular injury." *Id.* The Supreme Court has said that "locating a 'policy' ensures that a municipality is held liable only for those deprivations resulting from the decisions of its duly constituted legislative body or of those officials whose acts may fairly be said to be those of the municipality." *Board of County Comm'rs v. Brown*, 520 U.S. at 403-04 (citing *Monnell*, 436 U.S. 658, 98 S. Ct. 2018).

At this stage in the case, Plaintiffs do not need to prove a county custom or policy. Rather, they must allege facts which, if true, state a claim for which relief can be granted. Plaintiffs have failed to allege any facts showing that the allegedly

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that this questions presents a difficult policy decision best left to the purview of the Fifth Circuit, and not a district court.

[7] The Court notes that this conclusion is aided by the fact that on a motion to dismiss for failure to state a claim the facts as alleged must be construed in a light most favorable to the plaintiff and all facts as alleged are to be taken as true.

unconstitutional action of Officer Ontiveros was carried out pursuant to the official policies and customs of the City. Plaintiffs essentially describe a "single incident" in which Officer Ontiveros exercised poor judgment. See Campbell, 43 F.3d at 977. There are no facts in the Complaint to support Plaintiffs' allegations of any of the following customs or policies on the part of the City: (1) failure to train police officers on their duties when confronted with intoxicated drivers; (2) failure to timely review and enforce the City's policies and procedures; (3) allowing discretion on arresting intoxicated drivers; and (4) allowing police officers to extend "special favors" to family members of law enforcement officers even when those "special favors" would result in failing to protect individuals such as Cravens and the public at large.[8] These are all conclusory allegations without any supporting facts. Furthermore, Plaintiffs' have failed to assert any facts which would show that any of these policies were the "moving force" behind Officer Ontiveros's decision not to arrest Cravens, or that Officer Ontiveros's poor decision on that evening was anything more than an isolated incident. For these reasons, Plaintiffs' claim against the City under the state-created danger theory is hereby **DISMISSED WITH PREJUDICE**.

B. Equal Protection Claim

The Equal Protection Clause requires similar treatment of all persons similarly situated. *See City of Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 439, 105 S. Ct. 3249, 3254, 87 L. Ed. 2d 313 (1985). A party who wishes to make out an equal protection claim must prove the existence of purposeful

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[8] There are not even any facts indicating that Officer Ontiveros was granting anyone a "special favor" by failing to arrest Cravens.

discrimination motivating the alleged state action. *See Washington v. Davis*, 426 U.S. 229, 246-50, 96 S. Ct. 2040, 2051–52, 48 L. Ed. 2d 597 (1976); *Bryan v. City of Madison, Miss.*, 213 F.3d 267, 276 (5th Cir. 2000); *Vera v. Tue*, 73 F.3d 604, 609–10 (5th Cir. 1996). To establish a claim of selective law enforcement, a plaintiff must show that selective enforcement was deliberately based upon an unjustifiable standard, such as race or religion. *See Beeler v. Rounsavall*, 328 F.3d 813, 817 (5th Cir. 2003).

Plaintiffs assert that "[b]ut for [Cravens's] status as an African-American, Officer Ontiveros would have properly arrested [him] in order to protect him." The City argues that this claim is unsupported and conclusory. The Court agrees. There are no facts in the Complaint to support an equal protection violation. There are no facts supporting an inference that the decision not to arrest Cravens was based on race. There are no facts showing or even alleging that similarly situated individuals of other groups outside Cravens' class were arrested under the same circumstances, nor are there any facts to support any inference of purposeful discrimination on the part of Officer Ontiveros. Plaintiffs have failed to allege any facts supporting any theory of racial discrimination, bias, or prejudice, or that race had anything to do with Officer Ontiveros's decision not to arrest Cravens. The unsupported allegation merely creates a suspicion that Plaintiffs might have a right of action, and that alone is insufficient to survive a motion to dismiss for failure to state a claim. *See Campbell*, 43 F.23d at 975.

Additionally, the Fifth Circuit has noted that "the Equal Protection Clause should not be used to make an end-run around the *DeShaney* principle that there is no constitutional right to state protection for acts carried out by a private actor." *Beltran*, 367 F.3d at 304. A plaintiff cannot circumvent the rule

of *DeShaney* with an unsupported allegation that a police officer exercised his discretion to arrest in one incident but not in another based on race. *See McKee v. City of Rockwall*, 877 F.2d 409, 413 (5th Cir. 1989). Yet, this is exactly what Plaintiffs are trying to do. There are no alleged facts supporting the assertion that Officer Ontiveros selectively enforced the drunk driving laws on any impermissible ground. *See Woodard v. Andrus*, 419 F.3d 348, 354 (5th Cir. 2005).

As such, Plaintiffs equal protection claim against the City must fail. If there is no constitutional injury at the hands of the police, then the question whether any departmental policies or customs might have authorized the conduct is moot. *See Los Angeles v. Heller*, 475 U.S. at 799, 106 S. Ct. at 1573. Plaintiffs' equal protection claim against the City is hereby **DISMISSED WITH PREJUDICE**.

IV. Conclusions

Plaintiffs have failed to allege facts sufficient to support their claims against the City. For the reasons stated above, the City's Motion to Dismiss for Failure to State a Claim is **GRANTED**. All of Plaintiffs' claims against the City are **DISMISSED WITH PREJUDICE**. A Final Judgment will be issued contemporaneously with this Order. Each Party is to bear its own taxable costs, expenses, and attorneys' fees incurred herein to date.

IT IS SO ORDERED.

DONE this 28th day of February, 2006, at Galveston, Texas.

s/_____
Samuel B. Kent
United States District Judge

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

Marie Cravens, Individually and on behalf of the Estate of Abner Cravens, Deceased and All Wrongful Death and Survival Action Beneficiaries, Tony Cravens, Natasha Cravens, and Lorreta Cravens, as next Friend of Lakeiya Cravens, a Minor

vs. Civil Action No. 03:05-cv-545
(Jury Requested)

City of La Marque, Texas

Plaintiffs Marie Cravens', Tony Cravens', Natasha Cravens' and Loretta Cravens' Original Complaint

1. COME NOW PLAINTIFFS MARIE CRAVENS, INDIVIDUALLY AND ON BEHALF OF THE ESTATE OF ABNER CRAVENS DECEASED AND ALL WRONGFUL DEATH AND SURVIVAL ACTION BENEFICIARIES, TONY CRAVENS, NATASHA CRAVENS AND LORETTA CRAVENS, AS NEXT FRIEND OF LAKEIYA CRAVENS, A MINOR ("the Cravens"), complaining of and seeking money damages from the CITY OF LA MARQUE, TEXAS ("City of La Marque"), Defendant, for personal injuries arising from a vehicular accident which occurred on or about October 13, 2003 on the grounds that (1) City of La Marque is directly liable for the actions of Officer Ontiveros based on its policies, customs and practices which resulted in the

violation of Abner Cravens' constitutional rights (Fourteenth Amendment substantive due process right, liberty interest in personal security and equal protection) resulting in his untimely death. See DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989); Kneipp v. Tedder, 95 F.3d. 1199 (3d Cir. 1996)(held police officers action of stopping an obviously intoxicated pedestrian walking home from a bar and releasing her to go home alone in cold weather could qualify as the requisite affirmative action for purposes of a state-created danger claim under 42 U.S.C. § 1983). For cause of action, Plaintiffs would show the following:

I.
Parties

2. Maria Inez Cravens is a natural person and resided in Galveston County, Texas at the time the cause of action that is the basis of the suit accrued. She is the natural mother of Abner Cravens, Deceased. She is the administrator of the Estate of Abner Cravens, Deceased and authorized to pursue this action on behalf of the Estate, all heirs of the Estate and all wrongful death and survival action beneficiaries. The Estate of Abner Cravens, Deceased arose upon his untimely death on or about October 22, 2003. Abner Cravens' natural father predeceased Abner Cravens. Maria Inez Cravens is the only surviving natural parent.

3. Tony Cravens is a natural person and resided in Galveston County, Texas at the time the cause of action that is the basis of the suit accrued. Tony Cravens is of majority age and is the natural son of Abner Cravens, Deceased. As such, he is a surviving child and a wrongful death

beneficiary and heir of the Estate of Abner Cravens, Deceased.

4. Natasha Cravens is a natural person and resided in Galveston County, Texas at the time the cause of action that is the basis of the suit accrued. Natasha Cravens is of majority age and is the natural daughter of Abner Cravens, Deceased. As such, she is a surviving child and a wrongful death beneficiary and heir of the Estate of Abner Cravens, Deceased.

5. Lakeiya Cravens is a natural person and minor and resided in Galveston County, Texas with her mother natural parent or legal guardian, Loretta Cravens at the time the cause of action that is the basis of the suit accrued. Loretta Cravens brings this action on behalf of Lakeiya Cravens. Abner Cravens, Deceased is the natural parent of Lakeiya Cravens. Abner Cravens was not married to anyone at the time of his death. Lakeiya Cravens is a surviving child and a wrongful death beneficiary and heir of the Estate of Abner Cravens, Deceased. There are no other surviving children of Abner Cravens, Deceased.

6. City of La Marque, Texas is a municipality with its principal place of business located in Galveston County, Texas and whose designated agent for service of process in the State of Texas is the City Manager or other authorized officer of the city government. ***City of La Marque may be served with summons, a true and correct copy of this Complaint at 1111 Bayou Road, La Marque, Texas 77568. Request is hereby made that the clerk of the court process the summons prepared for service, return same to the undersigned counsel so that the summons and complaint can be properly served pursuant to the Federal Rules of Civil Procedure to the person and location indicated herein***.

II.
Subject Matter Jurisdiction

7. This action arises under the United States Constitution, particularly the Fourteenth Amendment and under federal law, particularly 42 U.S.C. §§ 1983 and 1988. This Court is vested with original jurisdiction over these federal claims by operation of 28 U.S.C. §§ 1331 and 1343, and has supplemental jurisdiction pursuant to 28 U.S.C. § 1367 to hear claims arising under the Constitution and laws of Texas. This Court is authorized to award attorneys fees pursuant to 42 U.S.C. § 1988.

III.
Personal Jurisdiction

8. The court has personal jurisdiction over Plaintiffs by virtue of Plaintiffs filing this Complaint with the clerk of the court. The court has personal jurisdiction over Defendant pursuant to proper service of summons with a copy of this Complaint and the fact that the City of La Marque is geographically located in Texas and exists under the laws of Texas.

IV.
Venue

9. Venue is proper in the United States District Court for the Southern District of Texas Galveston Division under 28 U.S.C. § 1391(b), in that the City of La Marque is located and resides in the Galveston Division and a substantial part of the events or omissions giving rise to the claim occurred in the Galveston Division; to wit: the wrongful actions of the Defendant took place in the Galveston Division, the accident which lead to the death of Abner

Cravens, Deceased occurred in the Galveston Division and Abner Cravens died in the Galveston Division.

V.
Factual Background

10. At about 5:29 p.m., on or about October 13, 2003, Abner Cravens was driving his vehicle in La Marque, Texas and rear-ended another vehicle driven by Rosezelia Sonnier, who happened to also be Abner Cravens' cousin. After the accident, Ms. Sonnier and others were concerned about the physical safety of Abner Cravens because Cravens appeared to be intoxicated. Out of concern for Abner Cravens safety, the La Marque police were called. The La Marque police came to the scene. Officer Ricardo Ontiveros investigated the accident. While at the scene, Officer Ontiveros was advised that Abner Cravens was apparently intoxicated and that Cravens needed to be helped. Officer Ontiveros also observed the condition of Cravens and knew that Abner Cravens was in no condition to continue to drive his vehicle. Officer Ontiveros advised those at the scene that he had the situation in hand and that he would take care of the situation. Those at the scene believed Officer Ontiveros and left the well-being of Abner Cravens in the hands of Officer Ontiveros. Officer Ontiveros detained Abner Cravens for questioning for several minutes. Officer Ontiveros had probable cause to arrest and take into custody Abner Cravens for driving while under the influence, but failed to do so. Thereafter, Officer Ontiveros released Abner Cravens and allowed him to continue driving his vehicle even though Abner Cravens was obviously intoxicated and posed a danger to himself and others. Officer Ontiveros used his authority as a police officer to create a dangerous situation or to make Abner Cravens more vulnerable to danger had

Officer Ontiveros not intervened; to wit: family members and other concerned citizens were at the scene and were in the process of helping and protecting Abner Cravens from himself. Thereafter, Officer Ontiveros advised that he would lookout for the well-being of Cravens and actively used his authority as a police officer to discourage and prevent others from otherwise protecting Abner Cravens from himself. The conduct of Officer Ontiveros in discourage and preventing others from helping Abner Cravens and in detaining Abner Cravens and then releasing him to drive his vehicle unescorted in a seriously intoxicated state made Abner Cravens vulnerable to harm. It is very much conceivable and probable that but for the intervention of Officer Ontiveros, Abner Cravens' family members, friends and concerned citizens in the small community of La Marque, Texas would have continued looking out for the safety of Abner Cravens and made sure that he was driven from the scene and given proper medical care where he would have been safe. Abner Cravens was in a worse position after Officer Ontiveros intervened than Abner Cravens would have been had Officer Ontiveros not done so. As a result of the affirmative acts of Officer Ontiveros, the danger or risk of injury to Abner Cravens was greatly increased; to wit: Officer Ontiveros intervened and cut off Abner Craven's private source of protection by advising others at the scene that he would properly handle the situation and that their involvement was no longer needed, necessary or allowed, thereby increasing the danger that Abner Cravens would suffer harm in his visibly intoxicated state when Officer Ontiveros wilfully and with deliberate indifference abandoned Abner Cravens and allowed him to drive away from the scene. In so acting, Officer Ontiveros acted with wilful disregard for the safety and well-being of Abner Cravens, Deceased and with deliberate indifference to the

safety and well-being of Abner Cravens. The circumstances of the case show that a relationship existed between the state and Abner Cravens whereby Officer Ontiveros exerted sufficient control over Abner Cravens that resulted in Officer Ontiveros placing Abner Cravens in danger of foreseeable injury. This relationship was sufficient to establish a duty on the part of Officer Ontiveros to protect Abner Cravens under the "state-created danger" theory of liability or alternatively or in addition to the "state-created danger" duty, a special relationship existed between the state and Abner Cravens by virtue of private citizens (who were helping Abner Cravens) transferring their helpful efforts over to Officer Ontiveros which gave rise to a duty to protect Abner Cravens under DeShaney. Officer Ontiveros knew that Abner Cravens was intoxicated and was not capable of safely operating his vehicle. Shortly after being released by Officer Ontiveros, Abner Cravens was involved in another car accident which was very severe and resulted in injuries to Abner Cravens from which he ultimately died several days later. Abner Cravens crossed the center line and ran head-on into oncoming traffic. As a direct and proximate result of the wrongful action of Officer Ontiveros, Abner Cravens suffered severe injuries which ultimately lead to his untimely death. Plaintiffs seek and demand recovery for all damages alleged and prayed for herein including but not limited to general damages allowed by law, both incurred in the past and which Plaintiffs will incur in the future based on reasonable probability, and special damages incurred or reasonably likely to be incurred in the future.

VI.
Causes of Action

11. All acts of the Defendant, their officers, agents, servants, employees, or persons acting at their behest or direction, were done under the color and pretense of state law, including the ordinances, regulations, customs, policies and usages of the City of La Marque.

A.
Liability of Officer Ontiveros

1. 42 U.S.C. § 1983 Liability for Violating Abner Cravens' Fourteenth Amendment Substantive Due Process Rights to Life, Liberty and Personal Security

12. The above paragraphs are incorporated herein by reference as if set forth herein verbatim.

13. At all relevant times, Abner Cravens, Deceased was vested with, possessed and guaranteed by the Fourteenth Amendment to the United States Constitution the substantive due process rights to life, liberty and personal security. Officer Ontiveros owed a duty to Abner Cravens, Deceased to protect Cravens substantive due process rights under these circumstances. Officer Ontiveros breached this duty and violated Cravens' substantive due process rights. Ontiveros' breach of his duty owed to Cravens was wrongful and proximately caused bodily injuries to Cravens before he died and proximately caused the death of Abner Cravens, Deceased such that Abner Cravens suffered the lose of life, liberty and personal security at the unlawful hand of Officer Ontiveros in violation of Abner Cravens constitutional

rights. Officer Ontiveros is being sued in his individual capacity.

14. When Officer Ontiveros acted wrongfully to the detriment of Abner Cravens, Deceased, he was acting without discretion; to wit: under the circumstances of this case, Officer Ontiveros had no discretion whatsoever and was obligated to arrest Abner Cravens, Deceased and take him into custody and render proper protective care because of the known level of his intoxication. Therefore, Officer Ontiveros does not enjoy any qualified immunity. The act of arresting under the circumstances had been reduced to a mere ministerial task requiring no discretion.

15. To the extent Officer Ontiveros is found to have been acting within the scope of his discretionary authority, nevertheless, Officer Ontiveros still does not enjoy any qualified immunity; to wit: his conduct violated clearly established statutory or constitutional law of which a reasonable person would have known and his conduct was not objectively reasonable under the circumstances. Harlow v. Fitzerald, 457 U.S. 80, 818, 73 L. Ed. 2d 396, 102 S. Ct. 2727 (1982); Mendenhall v. Riser, 213 F.3d 226, 230 (5th Cir. 2000). The duty to protect citizens after a special relationship is created or when the state subjects a citizen to a "state-created" danger or when a liberty interest has otherwise been infringed has long existed before October 13, 2003. See DeShaney v. Winnebago County Dept. of Social Services, 489 U.S. 189, 109 S. Ct. 998, 103 L. Ed. 2d 249 (1989); Kneipp v. Tedder, 95 F.3d. 1199 (3d Cir. 1996)(held police officer's action of stopping an obviously intoxicated pedestrian walking home from a bar and releasing her to go home alone in cold weather could qualify as the requisite affirmative action for purposes of a state-created danger claim under

42 U.S.C. § 1983). In addition, municipalities in this circuit and in this division have long been aware of the possibility of being held liable under the "special relationship" or "state-created" danger theory of liability under § 1983 and the Fourteenth Amendment for substantive due process and equal protection violations. See Martin v. City of League City, 23 F. Supp 720, 722 (S.D.Tex 1998); McKinney v. Irving Ind. Sch. Dist., 309 F.3d 308, 313 (5th Cir. 2002); McClendon v. City of Columbia, 285 F.3d 1078 (5th Cir. 2002); Piotrowski v. City of Houston, 51 F.3d 512 (5th Cir. 1995). The latest word from the United States Court of Appeals for the Fifth Circuit concerning this type of cause of action appears at Hernandez v. Tex. Dep't of Protective & Regulatory Servs., 380 F.3d 872, 880 (5th Cir. 2004) wherein the court once again emphasized that the court has not determined whether or not a state official has a duty to protect under the "state-create danger" theory of liability. The Fifth Circuit Court of Appeals has consistently held that the right to be free of state-occasioned damage to a person's bodily integrity is protected by the Fourteenth Amendment's guarantee of due process. Doe v. Taylor Ind. Sch. Dist., 15 F.3d 443, 450-51 (5th Cir. 1994).

16. Officer Ontiveros is liable to all of the wrongful death beneficiaries pursuant to TEX. CIV. PRAC. & REM. CODE §§ 71.001 thru 71.011 (Vernon 1996) commonly referred to as the Texas Wrongful Death Act to the extent that his wrongful conduct alleged herein proximately resulted in the death of Abner Cravens, Deceased and/or as may be necessary to effectuate proper remedies for the alleged wrongful acts and injuries suffered.

17. The Deceased did not die instantly but rather suffered great pain and physical trauma before his death. As a

result, the Estate of Abner Cravens, Deceased is entitled to damages inflicted upon him by Ontiveros.

18. Ontiveros is liable to the Estate of Abner Cravens, Deceased and all of the survival action beneficiaries pursuant to TEX. CIV. PRAC. & REM. CODE §71.021(Vernon 1996) commonly referred to as the Texas Survival Act to the extent that Ontiveros' wrongful conduct alleged herein proximately resulted in the bodily injuries and suffering of Abner Cravens, Deceased before his death and/or as may be necessary to effectuate proper remedies for the alleged wrongful acts and injuries suffered by Abner Cravens, Deceased. In addition, Ontiveros is liable for wrongfully taking Abner Cravens enjoyment of life.

2. 42 U.S.C. § 1983 Liability for Violating Abner Cravens' Fourteenth Amendment Right to Equal Protection under the Laws

19. The above paragraphs are incorporated herein by reference as if set forth herein verbatim.

20. At all relevant times, Abner Cravens, Deceased was vested with, possessed and guaranteed by the Fourteenth Amendment to the United States Constitution the right to equal protection of the laws regardless of his race. Abner Cravens, Deceased is an African American. Officer Ontiveros owed a duty to Abner Cravens, Deceased to protect Cravens' equal protection rights under these circumstances. Officer Ontiveros breached this duty and violated Cravens equal protection rights. Ontiveros' breach of his duty owed to Cravens was wrongful and proximately caused bodily injuries to Cravens before he died and proximately caused the death of Abner Cravens,

Deceased such that Abner Cravens failed to enjoy equal protection under the law at the unlawful hand of Officer Ontiveros in violation of Abner Cravens' constitutional rights. But for Abner Cravens' status as an African American, Officer Ontiveros would have properly arrested Abner Cravens in order to protect Abner Cravens from himself. In other words, Abner Cravens lost the ability to lookout for his own safety because of his level of intoxication and needed to be protected. Once Officer Ontiveros detained Cravens and cut-off Cravens private means of protection, Officer Ontiveros had an obligation to provide adequate protection but failed to do so because of Cravens' race. Cravens received treatment different from that received by similarly situated individuals and that unequal treatment stemmed from a discriminatory intent or discriminatory indifference. Because of Cravens' race, Officer Ontiveros was indifferent to the protective needs of Cravens and had Cravens not been African American, Ontiveros likely would have protected Cravens under the circumstances. But for Ontiveros' action, Cravens would have not been injured and would still be alive. Ontiveros' unconstitutional actions proximately caused the injuries and untimely death of Abner Cravens, Deceased.

3. Common Law Liability of Officer Ontiveros for Gross Negligence

21. The above paragraphs are incorporated herein by reference as if set forth herein verbatim.

22. As a police officer, Ontiveros owed a duty to Cravens to properly exercise that police authority in good faith. Ontiveros failed to properly exercise that police authority in good faith and such failure proximately caused the

bodily injuries and damages to Abner Cravens. Ontiveros' action was not discretionary under the circumstances. To the extent the action was discretionary, no reasonably prudent official could have believed releasing Cravens under the circumstances of obvious intoxication was consistent with Cravens' rights. Ontiveros' actions were not objectively reasonable. Therefore, he enjoys no "official immunity" under Texas state law.

23. The acts of Ontiveros rose above mere negligence and constituted acts, errors and omissions of gross negligence or malice; to wit: Ontiveros' actions constituted an act or omission which when viewed objectively from the standpoint of the actor at the time of its occurrence involved an extreme degree of risk, considering the probability and magnitude of the potential harm to others; and of which the actor has actual, subjective awareness of the risk involved, but nevertheless proceeds with conscious indifference to the rights, safety, or welfare of others including the Deceased and Plaintiffs in all capacities. The gross negligence of Ontiveros proximately caused the damages complained of herein. Ontiveros was grossly negligent and is liable for all wrongful death and survival action damages allowed by law for gross negligence including but not limited to exemplary damages. Plaintiffs' claims for gross negligence arise from, among other things, the guarantees and protections of the Texas Constitution, Texas statutes, common law of the state of Texas and remedies allowed under 42 U.S.C. § 1983 et seq. and the law governing enforcement of federal constitutional rights.

B.
Liability of the City of La Marque

42 U.S.C. § 1983 Liability for Violating Abner Cravens' Fourteenth Amendment Substantive Due Process Rights to Life, Liberty and Personal Security and Equal Protection

24. The above paragraphs are incorporated herein by reference as if set forth herein verbatim.

25. The unconstitutional action of Ontiveros was carried out pursuant to an official municipal policy or custom of the City of La Marque which resulted in a pattern or practice of failing to properly enforce DWI cases, failing to properly train officers such as Ontiveros on the officers' duties when confronted with obviously intoxicated drivers, failing to timely review and enforce the policies and procedures which the municipality had established, failing to educate officers on the evils of bias and prejudice and the duty to equally enforce the laws regardless of race, failing to timely review officers' conduct to determine the presence of racial bias in the officers, as well as failing to timely review to discover incompetence of police officers, allowing officers discretion on arresting obviously intoxicated drivers, allowing officers to extend so-called "special favors" to family members of law enforcement officers even when extending special favors would result in failing to properly protect persons such as Cravens and pose dangers and risks not only to Cravens but also to members of the general public. To the extent, the City of La Marque in fact had proper policies and customs in place concerning these matters, the City of La Marque failed to properly enforce those policies, procedures and customs. The direct action of the City of La Marque

through its "official policies" constituted either: 1) a policy statement, ordinance, regulation, or decision that is officially adopted and promulgated by the municipality's law-making officers or by an official to whom the lawmakers have delegated policymaking authority; or 2) a persistent widespread practice of city officials or employees, which, although not authorized by officially adopted and promulgated policy, is so common and well settled as to constitute a custom that fairly represents municipal policy. Webster v. City of Houston, 735 F.2d 838, 841 (5th Cir. 1984); Morris v. City of Alvin, Texas, 950 F. Supp. 804, 806 (S.D. Tex. 1997). Moreover, the City of La Marque took steps after the accident which constituted a ratification of Officer Ontiveros' wrongful action and proved to be consistent with the City's pattern practice, custom of indifference toward protecting the interests of its citizens. Not until the City of La Marque was put on notice that it might be liable for the conduct of Ontiveros did the City of La Marque take any substantive action to try and protect itself from liability. These efforts were a subterfuge to try and hide the City's direct wrongful conduct that lead to the death of Cravens and Plaintiffs' damages.

VII.
Damages and Prayer for Relief

26. The above paragraphs are incorporated herein by reference as if fully set forth herein verbatim.
27. As a proximate and producing result of the foregoing unlawful actions of the City of La Marque, Plaintiffs demand and pray that the City of La Marque be summoned to appear and answer herein and that after a lawful trial that the court award both special and general

money damages to Plaintiffs and against the City of La Marque in the following particulars:

42 U.S.C. § 1983 & Wrongful Death Damages: Surviving Parent

A. Pecuniary loss damages suffered in the past and in all reasonable probability this Plaintiff will suffer in the future; to wit: $1,000,000 or such other amount that the jury deems fair and just.

B. Loss of companionship and society damages suffered in the past and in all reasonable probability this Plaintiff will suffer in the future; to wit: $5,000,000 or such other amount that the jury deems fair and just.

C. Mental anguish suffered in the past and in all reasonable probability will be suffered in the future; to wit: $5,000,000 or such other amount that the jury deems fair and just.

D. Reasonable and necessary attorneys fees.

E. Costs of court.

F. Pre and post judgment interest as allowed by law.

G. Such other and further relief to which the Wrongful Death beneficiaries may be justly entitled to received at law or in equity both special and general.

42 U.S.C. § 1983 & Wrongful Death Damages: Surviving Children

A. Pecuniary loss damages suffered in the past and in all reasonable probability these Plaintiffs will suffer in the future; to wit: $1,000,000 or such other amount that the jury deems fair and just.

B. Loss of companionship and society damages suffered in the past and in all reasonable probability these Plaintiffs will suffer in the future; to wit: $5,000,000 or such other amount that the jury deems fair and just.

C. Mental anguish suffered in the past and in all reasonable probability will be suffered in the future; to wit: $5,000,000 or such other amount that the jury deems fair and just.

D. Loss of inheritance damages in all reasonable probability these Plaintiffs will suffer in the future; to wit: $1,000,000 or such other amount that the jury deems fair and just.

E. Reasonable and necessary attorneys fees.

F. Costs of court.

G. Pre and post judgment interest as allowed by law.

H. Such other and further relief to which the Wrongful Death beneficiaries may be justly entitled to received at law or in equity both special and general.

42 U.S.C. § 1983 & Survival Damages

A. Physical pain and mental anguish suffered by the Deceased; to wit: $5,000,000 or such other amount that the jury deems fair and just.

B. Reasonable and necessary costs of medical care and treatment including but not limited to doctors, hospital, nurses, medicine and other services and supplies which the Deceased incurred in the past as a result of the injuries sued for herein; to wit: $200,000 or such other amount that the jury deems fair and just.

C. Loss of the enjoyment of life.

D. Reasonable and necessary funeral and burial expenses for the Deceased suitable to his station in life; to wit: $15,000 or such other amount that the jury deems fair and just.

E. Reasonable and necessary attorneys fees.

F. Costs of court.

G. Pre and post judgment interest as allowed by law.

H. Such other and further relief to which the Survival Action beneficiaries may be justly entitled to received at law or in equity both special and general.

Respectfully submitted,

DOLLINGERLAW

/s/_____

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